

1  
2  
3  
4 MAGGIE CAMPBELL,  
5 Plaintiff,  
6 v.  
7 EBAY, INC., et al.,  
8 Defendants.

10  
11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 Case No. 13-cv-02632-HSG

15 **ORDER DISMISSING COMPLAINT**

16 Re: Dkt. Nos. 126, 128

17 Pending before the Court are Defendants' motion to dismiss Plaintiff's fourth amended  
18 complaint for failure to prosecute and Plaintiff's motion to dismiss her fourth amended complaint  
19 without prejudice. Both parties agree that the case should be dismissed; they dispute only whether  
20 the dismissal should be with or without prejudice.

21 Under Federal Rule of Civil Procedure 41(a)(2), a district court may dismiss an action at a  
22 plaintiff's request "on terms that the court considers proper." Such a motion "should be granted  
23 unless a defendant can show that it will suffer some plain legal prejudice as a result of the  
24 dismissal." *Hepp v. Conoco, Inc.*, 97 F. App'x 124, 124 (9th Cir. 2004). "[L]egal prejudice does  
25 not result merely because the defendant will be inconvenienced by having to defend in another  
26 forum or where a plaintiff would gain a tactical advantage by that dismissal." *Smith v. Lenches*,  
27 263 F.3d 972, 975 (9th Cir. 2001). Rather, legal prejudice is "prejudice to some legal interest,  
28 some legal claim, some legal argument." *Id.* at 976.

29 //

30 //

31 //

32 //

33 //

1 Defendants have not shown that they will suffer legal prejudice as defined by the Ninth  
2 Circuit if Plaintiff's complaint is dismissed without prejudice. Accordingly, the Court DENIES  
3 Defendants' motion, GRANTS Plaintiff's motion, and DISMISSES WITHOUT PREJUDICE  
4 Plaintiff's fourth amended complaint. The case management conference currently scheduled for  
5 July 7, 2015, is vacated. The Clerk shall close the file.

6 **IT IS SO ORDERED.**

7 Dated: July 2, 2015



8  
9 HAYWOOD S. GILLIAM, JR.  
United States District Judge

10  
11 United States District Court  
12 Northern District of California  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28